

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN OVERSIGHT,
1030 15th Street NW, B255
Washington, DC 20005

Plaintiff,

v.

U.S. DEPARTMENT OF AGRICULTURE,
1400 Independence Avenue SW
Washington, DC 20250

Defendant.

Case No. 19-cv-3259

COMPLAINT

1. Plaintiff American Oversight brings this action against the U.S. Department of Agriculture under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 391(e).

4. Because Defendant has failed to comply with the applicable time-limit provisions of FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency from

continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant U.S. Department of Agriculture (USDA) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). USDA has possession, custody, and control of the records American Oversight has requested.

STATEMENT OF FACTS

7. In August 2019, American Oversight submitted five FOIA requests to USDA seeking specified email communications and meeting records involving USDA Secretary Sonny Perdue and/or individuals and entities closely affiliated with Secretary Perdue.

Perdue Personal Email FOIA Request

8. On August 12, 2019, American Oversight submitted a FOIA request to USDA requesting:

All emails sent or received by Secretary Sonny Perdue on any personal, non-governmental, or non-official email account regarding official agency business,

including, but not limited to, emails sent through the email address sonny@perduepartners.com.

Please understand emails regarding “official agency business” to broadly include, at a minimum, all communications that would ordinarily comprise federal records per 44 U.S.C. § 3301(a)(1)(A), which defines federal government records as,

all recorded information . . . appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them[.] *Id.*

9. American Oversight requested all responsive records for the period from April 24, 2017, to the date USDA conducted a search for records.

10. By electronic mail on September 3, 2019, USDA acknowledged receipt of the Perdue Personal Email FOIA Request. USDA assigned this request the tracking number 2019-OSEC-06237-F.

11. American Oversight has not received any further communications from USDA regarding this FOIA request.

Perdue Family Business FOIA Request

12. On August 12, 2019, American Oversight submitted a FOIA request to USDA requesting:

All email communications (including email messages, email attachments, and calendar invitations) between (1) Secretary Perdue or anyone serving as his Chief of Staff, and (2) Jessica Perdue (including but not limited to the email account jess@perdue.pro), or anyone communicating from an email address ending in @perdue.pro or perduepartners.com.

13. American Oversight requested all responsive records for the period from April 24, 2017, to the date USDA conducted a search for records.

14. By electronic mail on August 28, 2019, USDA acknowledged receipt of the Perdue Family Business FOIA Request. USDA assigned this request the tracking number 2019-OSEC-06198-F.

15. American Oversight has not received any further communications from USDA regarding this FOIA request.

Perdue External Emails FOIA Request

16. On August 12, 2019, American Oversight submitted a FOIA request to USDA requesting:

All email communications (including email messages, email attachments, and calendar invitations) sent by Secretary Perdue to any email address ending in .com, .net, .org, .edu, or .pro (including complete email chains).

In an effort to accommodate the Department of Agriculture and reduce the number of responsive records to be processed and produced, American Oversight has limited its request to emails sent by Mr. Perdue. To be clear, American Oversight still requests that complete email chains be produced, displaying both the responsive sent messages and the prior received messages in each email chain. This means, for example, that both Secretary Perdue's response to an email from a .com domain and the initial received message are responsive to this request.

17. American Oversight requested all responsive records for the period from April 24, 2017, to the date USDA conducted a search for records.

18. By electronic mail on September 5, 2019, USDA acknowledged receipt of the Perdue External Emails FOIA request. USDA assigned this request the tracking number 2019-OSEC-06240-F.

19. American Oversight has not received any further communications from USDA regarding this FOIA request.

Directors White and Smith FOIA Request

20. On August 12, 2019, American Oversight submitted a FOIA request to USDA

Rural Development and the USDA Farm Service Agency requesting:

All email communications (including email messages, email attachments, and calendar invitations) between (1) Rural Development Georgia State Director Joyce White or Farm Service Agency Georgia Executive Director Tas Smith and (2) any of the following individuals or entities:

- i. Any personal email accounts attributed to Secretary Sonny Perdue;
- ii. Anyone communicating from an email address ending in perdue.pro;
- iii. Perdue, Inc., including anyone with an email address ending in perdueinc.com;
- iv. Perdue Partners, including anyone with an email address ending in perduepartners.com;
- v. Perdue Management Holdings LLC;
- vi. Perdue Business Holdings, Inc., including Robert Tuggle and anyone with an email address ending in dltj.com;
- vii. Senator David Perdue or anyone from his office, including the Senator and anyone with an email ending in perdue.senate.gov or perduesenate.com;
- or
- viii. AGrowStar, including anyone with an email address ending in agrowstar.com.

21. American Oversight requested all responsive records for the period from April 24, 2017, to the date USDA conducted a search for records.

22. By electronic mail on August 15, 2019, USDA's Farm Production and Conservation Business Center (FPAC-BC) acknowledged receipt of the Directors White and Smith FOIA request. FPAC-BC assigned this request the tracking number 2019-FPAC-FSA-06023-F.

23. American Oversight has not received an acknowledgment from USDA Rural Development.

24. American Oversight has not received any further communications from USDA regarding this FOIA request.

Perdue Meetings FOIA Request

25. On August 28, 2019, American Oversight submitted a FOIA request to USDA requesting:

1. All records reflecting the content of a meeting between Secretary Sonny Perdue and Brad Fairbairn of Fieldale Farms on or around October 4, 2017, which is referenced in USDA's July 5, 2019 FOIA production to American Oversight (agency tracking number 2018-DA-04597-F), including any calendar entries, emails and other written communications about the meeting, agendas, lists of meeting attendees, minutes, summaries, handwritten notes, talking points, transcripts, or materials displayed or exchanged during the meeting.

American Oversight believes that USDA is in the best position to identify the custodians of responsive records. However, we request that USDA search, at a minimum, records maintained by:

- a. Secretary Sonny Perdue, and any assistants or secretaries assigned to him
- b. Director of Scheduling Lauren Sullivan
- c. Former Chief of Staff Heidi Green

Please produce all responsive records from September 13, 2017, through October 25, 2017.

2. All records related to Secretary Sonny Perdue's participation in meetings of the Georgia Feed and Grain Association on or around June 22 and 23, 2017,[FN omitted] and any related events on those dates, such as meals and activities with fellow participants. Responsive records would include any calendar entries, invitations, travel itineraries, written communications about the meetings and related events, agendas, lists of meeting attendees, talking points, transcripts, minutes, summaries, handwritten notes, or materials displayed or exchanged during the meetings or related events.

American Oversight believes that USDA is in the best position to identify the custodians of responsive records. However, we request that USDA search, at a minimum, records maintained by:

- a) Secretary Sonny Perdue, and any assistants or secretaries assigned to him
- b) Director of Scheduling Lauren Sullivan
- c) Former Chief of Staff Heidi Green

Please produce all responsive records from April 1, 2017 through August 31, 2017.

3. All records reflecting any costs reimbursed or paid directly by USDA related to Secretary Sonny Perdue's participation in meetings of the Georgia Feed and Grain Association on or around June 22 and 23, 2017.

26. By electronic mail on September 13, 2019, USDA acknowledged receipt of the Perdue Meetings FOIA request. USDA assigned this request the tracking number 2019-OSEC-06619-F.

27. American Oversight has not received any further communications from USDA regarding this FOIA request.

Exhaustion of Administrative Remedies

28. As of the date of this Complaint, USDA has failed to (a) notify American Oversight of any determination regarding its FOIA requests, including the scope of any responsive records USDA intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

29. Through USDA's failure to respond to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I

Violation of FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Searches for Responsive Records

30. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

31. American Oversight properly requested records within the possession, custody, and control of USDA.

32. USDA is an agency subject to FOIA, and it must therefore make reasonable efforts to search for requested records.

33. USDA has failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA requests.

34. USDA's failure to conduct adequate searches for responsive records violates FOIA and USDA regulations.

35. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA requests.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

36. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

37. American Oversight properly requested records within the possession, custody, and control of USDA.

38. USDA is an agency subject to FOIA, and it must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

39. USDA is wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce non-exempt records responsive to its FOIA requests.

40. USDA is wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA requests.

41. USDA's failure to provide all non-exempt responsive records violates FOIA and USDA regulations.

42. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA requests;
- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (4) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant American Oversight such other relief as the Court deems just and proper.

Dated: October 30, 2019

Respectfully submitted,

/s/ Christine H. Monahan

Christine H. Monahan

D.C. Bar No. 1035590

/s/ Sara Kaiser Creighton

Sara Kaiser Creighton

D.C. Bar No. 1002367

AMERICAN OVERSIGHT

1030 15th Street NW, B255

Washington, DC 20005

(202) 918-7117

christine.monahan@americanoversight.org

sara.creighton@americanoversight.org

Counsel for Plaintiff